

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1383

Introduced by Assembly Member Jones
(Coauthors: Assembly Members Achadjian, Brough, and Chang)
(Coauthor: Senator Vidak)

February 27, 2015

An act to amend Section 12940 of, and to add Article 3 (commencing with Section 12958) to Chapter 6 of Part 2.8 of Division 3 of Title 2 of, the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, Jones. Veterans preferences: voluntary policy.

Under the California Fair Employment and Housing Act, it is an unlawful employment practice for an employer, unless based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California, to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment, or to bar or discharge a person from employment or a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person. The California Fair Employment and

Housing Act provides that nothing in that act relating to discrimination on account of sex affects the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

This bill would enact the Voluntary Veterans' Preference Employment Policy Act to authorize a private employer to establish and maintain a written veterans' preference employment policy to give a voluntary preference for hiring or retaining a veteran over another qualified applicant or employee. The bill would provide that the granting of a veterans' preference pursuant to the bill, in and of itself, shall be deemed not to violate any local or state equal employment opportunity law or regulation, including, but not limited to, the antidiscrimination provisions of the California Fair Employment and Housing Act. ~~The Voluntary Veterans' Preference Employment Policy Act would become operative on an unspecified date in 2016. The bill would provide that nothing in revise the existing veteran status provision in the California Fair Employment and Housing Act to remove references to discrimination on account of sex and to Vietnam-era veterans, and would, instead, provide that nothing in that act relating to discrimination affects the right of an employer to use veteran status as a factor in hiring decisions if the employer maintains a veterans' preference employment policy established in accordance with the Voluntary Veterans' Preference Employment Policy Act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12940 of the Government Code is
- 2 amended to read:
- 3 12940. It is an unlawful employment practice, unless based
- 4 upon a bona fide occupational qualification, or, except where based
- 5 upon applicable security regulations established by the United
- 6 States or the State of California:
- 7 (a) For an employer, because of the race, religious creed, color,
- 8 national origin, ancestry, physical disability, mental disability,
- 9 medical condition, genetic information, marital status, sex, gender,
- 10 gender identity, gender expression, age, sexual orientation, or
- 11 military and veteran status of any person, to refuse to hire or
- 12 employ the person or to refuse to select the person for a training

1 program leading to employment, or to bar or to discharge the
2 person from employment or from a training program leading to
3 employment, or to discriminate against the person in compensation
4 or in terms, conditions, or privileges of employment.

5 (1) This part does not prohibit an employer from refusing to
6 hire or discharging an employee with a physical or mental
7 disability, or subject an employer to any legal liability resulting
8 from the refusal to employ or the discharge of an employee with
9 a physical or mental disability, where the employee, because of
10 his or her physical or mental disability, is unable to perform his
11 or her essential duties even with reasonable accommodations, or
12 cannot perform those duties in a manner that would not endanger
13 his or her health or safety or the health or safety of others even
14 with reasonable accommodations.

15 (2) This part does not prohibit an employer from refusing to
16 hire or discharging an employee who, because of the employee's
17 medical condition, is unable to perform his or her essential duties
18 even with reasonable accommodations, or cannot perform those
19 duties in a manner that would not endanger the employee's health
20 or safety or the health or safety of others even with reasonable
21 accommodations. Nothing in this part shall subject an employer
22 to any legal liability resulting from the refusal to employ or the
23 discharge of an employee who, because of the employee's medical
24 condition, is unable to perform his or her essential duties, or cannot
25 perform those duties in a manner that would not endanger the
26 employee's health or safety or the health or safety of others even
27 with reasonable accommodations.

28 (3) Nothing in this part relating to discrimination on account of
29 marital status shall do either of the following:

30 (A) Affect the right of an employer to reasonably regulate, for
31 reasons of supervision, safety, security, or morale, the working of
32 spouses in the same department, division, or facility, consistent
33 with the rules and regulations adopted by the commission.

34 (B) Prohibit bona fide health plans from providing additional
35 or greater benefits to employees with dependents than to those
36 employees without or with fewer dependents.

37 (4) Nothing in this part relating to discrimination shall affect
38 the right of an employer to use veteran status as a factor in hiring
39 decisions if the employer maintains a veterans' preference

1 employment policy established in accordance with Article 3
2 (commencing with Section 12958).

3 (5) (A) This part does not prohibit an employer from refusing
4 to employ an individual because of his or her age if the law
5 compels or provides for that refusal. Promotions within the existing
6 staff, hiring or promotion on the basis of experience and training,
7 rehiring on the basis of seniority and prior service with the
8 employer, or hiring under an established recruiting program from
9 high schools, colleges, universities, or trade schools do not, in and
10 of themselves, constitute unlawful employment practices.

11 (B) The provisions of this part relating to discrimination on the
12 basis of age do not prohibit an employer from providing health
13 benefits or health care reimbursement plans to retired persons that
14 are altered, reduced, or eliminated when the person becomes
15 eligible for Medicare health benefits. This subparagraph applies
16 to all retiree health benefit plans and contractual provisions or
17 practices concerning retiree health benefits and health care
18 reimbursement plans in effect on or after January 1, 2011.

19 (b) For a labor organization, because of the race, religious creed,
20 color, national origin, ancestry, physical disability, mental
21 disability, medical condition, genetic information, marital status,
22 sex, gender, gender identity, gender expression, age, sexual
23 orientation, or military and veteran status of any person, to exclude,
24 expel, or restrict from its membership the person, or to provide
25 only second-class or segregated membership or to discriminate
26 against any person because of the race, religious creed, color,
27 national origin, ancestry, physical disability, mental disability,
28 medical condition, genetic information, marital status, sex, gender,
29 gender identity, gender expression, age, sexual orientation, or
30 military and veteran status of the person in the election of officers
31 of the labor organization or in the selection of the labor
32 organization's staff or to discriminate in any way against any of
33 its members, any employer, or any person employed by an
34 employer.

35 (c) For any person to discriminate against any person in the
36 selection, termination, training, or other terms or treatment of that
37 person in any apprenticeship training program, any other training
38 program leading to employment, an unpaid internship, or another
39 limited duration program to provide unpaid work experience for
40 that person because of the race, religious creed, color, national

1 origin, ancestry, physical disability, mental disability, medical
2 condition, genetic information, marital status, sex, gender, gender
3 identity, gender expression, age, sexual orientation, or military
4 and veteran status of the person discriminated against.

5 (d) For any employer or employment agency to print or circulate
6 or cause to be printed or circulated any publication, or to make
7 any nonjob-related inquiry of an employee or applicant, either
8 verbal or through use of an application form, that expresses,
9 directly or indirectly, any limitation, specification, or discrimination
10 as to race, religious creed, color, national origin, ancestry, physical
11 disability, mental disability, medical condition, genetic information,
12 marital status, sex, gender, gender identity, gender expression,
13 age, sexual orientation, or military and veteran status, or any intent
14 to make any such limitation, specification, or discrimination. This
15 part does not prohibit an employer or employment agency from
16 inquiring into the age of an applicant or from specifying age
17 limitations, where the law compels or provides for that action.

18 (e) (1) Except as provided in paragraph (2) or (3), for any
19 employer or employment agency to require any medical or
20 psychological examination of an applicant, to make any medical
21 or psychological inquiry of an applicant, to make any inquiry
22 whether an applicant has a mental disability, physical disability,
23 or medical condition, or to make any inquiry regarding the nature
24 or severity of a physical disability, mental disability, or medical
25 condition.

26 (2) Notwithstanding paragraph (1), an employer or employment
27 agency may inquire into the ability of an applicant to perform
28 job-related functions and may respond to an applicant's request
29 for reasonable accommodation.

30 (3) Notwithstanding paragraph (1), an employer or employment
31 agency may require a medical or psychological examination or
32 make a medical or psychological inquiry of a job applicant after
33 an employment offer has been made but prior to the
34 commencement of employment duties, provided that the
35 examination or inquiry is job related and consistent with business
36 necessity and that all entering employees in the same job
37 classification are subject to the same examination or inquiry.

38 (f) (1) Except as provided in paragraph (2), for any employer
39 or employment agency to require any medical or psychological
40 examination of an employee, to make any medical or psychological

1 inquiry of an employee, to make any inquiry whether an employee
2 has a mental disability, physical disability, or medical condition,
3 or to make any inquiry regarding the nature or severity of a physical
4 disability, mental disability, or medical condition.

5 (2) Notwithstanding paragraph (1), an employer or employment
6 agency may require any examinations or inquiries that the employer
7 or employment agency can show to be job related and consistent
8 with business necessity. An employer or employment agency may
9 conduct voluntary medical examinations, including voluntary
10 medical histories that are part of an employee health program
11 available to employees at that worksite.

12 (g) For any employer, labor organization, or employment agency
13 to harass, discharge, expel, or otherwise discriminate against any
14 person because the person has made a report pursuant to Section
15 11161.8 of the Penal Code, which prohibits retaliation against
16 hospital employees who report suspected patient abuse by health
17 facilities or community care facilities.

18 (h) For any employer, labor organization, employment agency,
19 or person to discharge, expel, or otherwise discriminate against
20 any person because the person has opposed any practices forbidden
21 under this part or because the person has filed a complaint, testified,
22 or assisted in any proceeding under this part.

23 (i) For any person to aid, abet, incite, compel, or coerce the
24 doing of any of the acts forbidden under this part, or to attempt to
25 do so.

26 (j) (1) For an employer, labor organization, employment agency,
27 apprenticeship training program, or any training program leading
28 to employment, or any other person, because of race, religious
29 creed, color, national origin, ancestry, physical disability, mental
30 disability, medical condition, genetic information, marital status,
31 sex, gender, gender identity, gender expression, age, sexual
32 orientation, or military and veteran status, to harass an employee,
33 an applicant, an unpaid intern or volunteer, or a person providing
34 services pursuant to a contract. Harassment of an employee, an
35 applicant, an unpaid intern or volunteer, or a person providing
36 services pursuant to a contract by an employee, other than an agent
37 or supervisor, shall be unlawful if the entity, or its agents or
38 supervisors, knows or should have known of this conduct and fails
39 to take immediate and appropriate corrective action. An employer
40 may also be responsible for the acts of nonemployees, with respect

1 to sexual harassment of employees, applicants, unpaid interns or
2 volunteers, or persons providing services pursuant to a contract in
3 the workplace, where the employer, or its agents or supervisors,
4 knows or should have known of the conduct and fails to take
5 immediate and appropriate corrective action. In reviewing cases
6 involving the acts of nonemployees, the extent of the employer's
7 control and any other legal responsibility that the employer may
8 have with respect to the conduct of those nonemployees shall be
9 considered. An entity shall take all reasonable steps to prevent
10 harassment from occurring. Loss of tangible job benefits shall not
11 be necessary in order to establish harassment.

12 (2) This subdivision is declaratory of existing law, except for
13 the new duties imposed on employers with regard to harassment.

14 (3) An employee of an entity subject to this subdivision is
15 personally liable for any harassment prohibited by this section that
16 is perpetrated by the employee, regardless of whether the employer
17 or covered entity knows or should have known of the conduct and
18 fails to take immediate and appropriate corrective action.

19 (4) (A) For purposes of this subdivision only, "employer" means
20 any person regularly employing one or more persons or regularly
21 receiving the services of one or more persons providing services
22 pursuant to a contract, or any person acting as an agent of an
23 employer, directly or indirectly, the state, or any political or civil
24 subdivision of the state, and cities. The definition of "employer"
25 in subdivision (d) of Section 12926 applies to all provisions of this
26 section other than this subdivision.

27 (B) Notwithstanding subparagraph (A), for purposes of this
28 subdivision, "employer" does not include a religious association
29 or corporation not organized for private profit, except as provided
30 in Section 12926.2.

31 (C) For purposes of this subdivision, "harassment" because of
32 sex includes sexual harassment, gender harassment, and harassment
33 based on pregnancy, childbirth, or related medical conditions.
34 Sexually harassing conduct need not be motivated by sexual desire.

35 (5) For purposes of this subdivision, "a person providing services
36 pursuant to a contract" means a person who meets all of the
37 following criteria:

38 (A) The person has the right to control the performance of the
39 contract for services and discretion as to the manner of
40 performance.

1 (B) The person is customarily engaged in an independently
2 established business.

3 (C) The person has control over the time and place the work is
4 performed, supplies the tools and instruments used in the work,
5 and performs work that requires a particular skill not ordinarily
6 used in the course of the employer's work.

7 (k) For an employer, labor organization, employment agency,
8 apprenticeship training program, or any training program leading
9 to employment, to fail to take all reasonable steps necessary to
10 prevent discrimination and harassment from occurring.

11 (l) (1) For an employer or other entity covered by this part to
12 refuse to hire or employ a person or to refuse to select a person
13 for a training program leading to employment or to bar or to
14 discharge a person from employment or from a training program
15 leading to employment, or to discriminate against a person in
16 compensation or in terms, conditions, or privileges of employment
17 because of a conflict between the person's religious belief or
18 observance and any employment requirement, unless the employer
19 or other entity covered by this part demonstrates that it has explored
20 any available reasonable alternative means of accommodating the
21 religious belief or observance, including the possibilities of
22 excusing the person from those duties that conflict with his or her
23 religious belief or observance or permitting those duties to be
24 performed at another time or by another person, but is unable to
25 reasonably accommodate the religious belief or observance without
26 undue hardship, as defined in subdivision (u) of Section 12926,
27 on the conduct of the business of the employer or other entity
28 covered by this part. Religious belief or observance, as used in
29 this section, includes, but is not limited to, observance of a Sabbath
30 or other religious holy day or days, reasonable time necessary for
31 travel prior and subsequent to a religious observance, and religious
32 dress practice and religious grooming practice as described in
33 subdivision (q) of Section 12926. This subdivision shall also apply
34 to an apprenticeship training program, an unpaid internship, and
35 any other program to provide unpaid experience for a person in
36 the workplace or industry.

37 (2) An accommodation of an individual's religious dress practice
38 or religious grooming practice is not reasonable if the
39 accommodation requires segregation of the individual from other
40 employees or the public.

1 (3) An accommodation is not required under this subdivision
2 if it would result in a violation of this part or any other law
3 prohibiting discrimination or protecting civil rights, including
4 subdivision (b) of Section 51 of the Civil Code and Section 11135
5 of this code.

6 (m) For an employer or other entity covered by this part to fail
7 to make reasonable accommodation for the known physical or
8 mental disability of an applicant or employee. Nothing in this
9 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
10 construed to require an accommodation that is demonstrated by
11 the employer or other covered entity to produce undue hardship,
12 as defined in subdivision (u) of Section 12926, to its operation.

13 (n) For an employer or other entity covered by this part to fail
14 to engage in a timely, good faith, interactive process with the
15 employee or applicant to determine effective reasonable
16 accommodations, if any, in response to a request for reasonable
17 accommodation by an employee or applicant with a known physical
18 or mental disability or known medical condition.

19 (o) For an employer or other entity covered by this part, to
20 subject, directly or indirectly, any employee, applicant, or other
21 person to a test for the presence of a genetic characteristic.

22 (p) Nothing in this section shall be interpreted as preventing the
23 ability of employers to identify members of the military or veterans
24 for purposes of awarding a veteran's preference as permitted by
25 law.

26 SEC. 2. Article 3 (commencing with Section 12958) is added
27 to Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government
28 Code, to read:

29
30 Article 3. Voluntary Veterans' Preference Employment Policies

31
32 12958. This article shall be known, and may be cited, as the
33 "Voluntary Veterans' Preference Employment Policy Act."

34 12958.1. As used in this article:

35 (a) "DD 214" means United States Department of Defense Form
36 214 or a similarly effective form issued by that department relating
37 to separation from military service.

38 (b) "Private employer" means a business entity in the private
39 sector of this state with one or more employees.

1 (c) “Veteran” means a person who served on active duty in the
2 Armed Forces of the United States who was discharged or released
3 with an honorable discharge.

4 (d) “Veterans’ preference employment policy” means a private
5 employer’s voluntary preference for hiring or retaining a veteran
6 over another qualified applicant or employee.

7 12958.2. (a) Notwithstanding any other law, a private employer
8 may establish and maintain a written veterans’ preference
9 employment policy.

10 (b) An employer with a veterans’ preference employment policy
11 may require that a veteran submit a DD 214 to be eligible for the
12 preference.

13 (c) The granting of a veterans’ preference pursuant to this article,
14 in and of itself, shall be deemed not to violate any local or state
15 equal employment opportunity law or regulation, including, but
16 not limited to, this chapter.

17 (d) The Department of Veterans Affairs shall assist any private
18 employer in determining if an applicant is a veteran to the extent
19 permitted by law.

20 ~~12958.3. This article shall become operative on _____, 2016.~~